

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SETH STEINMAN,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
JOHN KERESTES, ET AL.,	:	NO. 10-2398
Respondents.	:	

EXPLANATION AND ORDER

This matter has been referred to the undersigned for preparation of a Report and Recommendation concerning the *pro se* petition of Seth Steinman (“Steinman” or “Petitioner”) for the issuance of a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner is currently serving a sentence that arises out of a conviction in Philadelphia County on charges of rape and related crimes. His petition presents claims that Respondents agree have already been properly presented to the state court either on direct appeal or in the PCRA review process by a petition initiated by Steinman in 2007 and concluding with the Pennsylvania Supreme Court’s denial of allocatur on December 1, 2009. In response to previous orders of this Court, Respondents have filed an answer to Steinman’s habeas petition (Doc. No. 15), and he has filed a reply (Doc. No. 22). In that respect, briefing has closed and the matter would otherwise appear ripe for disposition.

Since filing his federal petition, which was docketed in this court on May 21, 2010, however, Petitioner has sought a continuance to allow discovery and has otherwise moved for the production of various discovery items (Doc. Nos. 6-9), which we denied (Doc. No. 13, filed Aug. 20, 2010). Thereafter, he moved for a stay, asking that his petition be placed in abeyance pending resolution in the state court of a second PCRA petition. (Doc. Nos. 18-19, docketed Oct. 29, 2010). We denied that motion on December 1, 2010, without prejudice, on the grounds that the petition

before the Court was not a mixed petition but rather one in which all of the claims had been exhausted. (Doc. No. 21.)

On March 24, 2011, Respondents filed a “Response to Motions for Leave to Amend Federal Habeas Petition and to Stay Proceedings.” (Doc. No. 23.) The filing purported to respond to a motion to stay proceedings that was served upon Respondents on January 31, 2011. (*See id.* at 1, n.1.) Respondents noted, however, that the motion did not appear on this Court’s docket. Petitioner filed a Rebuttal, accusing Respondents of misrepresenting facts when they asserted that he did not renew his motion for a stay. (Doc. No. 25 at 2 n.1.) However, our review of the docket confirms that no motion for stay has been docketed from Petitioner since his October 2010 filing, which has already been ruled upon.¹ In light of his rebuttal, it appears that Steinman may have intended to make such a filing. While we are unaware of the reason for it not having been received and/or docketed, we are unprepared to rule upon a motion that we have not seen and that has not been filed. We will, however, defer preparation of our Report and Recommendation for a short period of time in order to give Petitioner an opportunity to re-submit his motion for consideration by the Court.²

¹ Respondents’ submission suggests that Petitioner’s renewed motion for a stay and proposed amended petition may have been submitted “together with his reply,” which was docketed on January 31, 2011 and dated January 27, 2011.

² As Respondents already submitted their substantive response to the motion, and Petitioner has filed a rebuttal to that response, briefing on that motion will close with the filing of the motion.

AND NOW, this 13th day of April, 2011, for the reasons set forth in the foregoing explanation, **IT IS ORDERED** that Petitioner has until April 29, 2011 to file with the Clerk of this Court a copy of the motion(s) served upon Respondents on January 31, 2011 seeking leave to amend or supplement his petition.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE